

37 Am. Jur. 2d Fraud and Deceit § 225

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Fraud and Deceit

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V. Concealment

C. Nondisclosure Coupled with Tricks, Artifices, or Misrepresentation

§ 225. Generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#)  16, 17

Silence accompanied by deceptive conduct can give rise to an actionable fraudulent concealment.¹ Moreover, the rule that fraud cannot be predicated on a failure to disclose facts where the information is as accessible to one party as to the other,² and where the truth may be ascertained by the exercise of reasonable diligence, does not justify a resort to active deceit or fraud³ and hence does not apply where a party, in addition to nondisclosure, uses any artifice to throw the other party off his or her guard and to lull that party into a false security.⁴

Concealment becomes a fraud where it is affected by misleading and deceptive talk,⁵ acts, or conduct;⁶ where it is accompanied by misrepresentations;⁷ or where, in addition to a party's silence, there is any statement, word, or act on that party's part that tends affirmatively to a suppression of the truth, to a covering up or disguising of the truth, or to a withdrawal or distraction of a party's attention from the real facts,⁸ as then the line is overstepped, and the concealment becomes a fraud.⁹ Such conduct is designated "active concealment," and it produces the same result in law as positive misrepresentation.¹⁰ Likewise, resort to any trick or artifice to prevent an adversary from discovering the truth is equivalent to active misrepresentation.¹¹

Observation:

Very little in addition to the nondisclosure of material facts is required to prevent the application of the general rule which renders mere silence nonactionable and to make a party guilty of fraud.¹²

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Footnotes

- 1 [FE Digital Investments Ltd. v. Hale](#), 499 F. Supp. 2d 1054 (N.D. Ill. 2007), judgment *aff'd*, 301 Fed. Appx. 540 (7th Cir. 2008) (applying Illinois law); [Miner v. Fashion Enterprises, Inc.](#), 342 Ill. App. 3d 405, 276 Ill. Dec. 652, 794 N.E.2d 902 (1st Dist. 2003).
- 2 [Waldridge v. Homeservices of Kentucky, Inc.](#), 2011 WL 1598738 (Ky. Ct. App. 2011).
- 3 [Beagle v. Bagwell](#), 169 So. 2d 43 (Fla. 1st DCA 1964) (property said to be in excellent condition but termite damage was concealed).
- 4 [Ash Grove Lime & Portland Cement Co. v. White](#), 361 Mo. 1111, 238 S.W.2d 368 (1951).
- 5 [Hoffman v. Stamper](#), 155 Md. App. 247, 843 A.2d 153 (2004), *aff'd* in part, *rev'd* in part on other grounds and remanded, 385 Md. 1, 867 A.2d 276 (2005).
- 6 [Hoffman v. Stamper](#), 155 Md. App. 247, 843 A.2d 153 (2004), *aff'd* in part, *rev'd* in part on other grounds and remanded, 385 Md. 1, 867 A.2d 276 (2005).
- 7 [Hoffman v. Stamper](#), 155 Md. App. 247, 843 A.2d 153 (2004), *aff'd* in part, *rev'd* in part on other grounds and remanded, 385 Md. 1, 867 A.2d 276 (2005).
- 8 [Hoffman v. Stamper](#), 155 Md. App. 247, 843 A.2d 153 (2004), *aff'd* in part, *rev'd* in part on other grounds and remanded, 385 Md. 1, 867 A.2d 276 (2005).
- 9 [Mason v. Salomon](#), 62 N.M. 425, 311 P.2d 652 (1957) (recognizing rule).
- 10 [Tyler v. Savage](#), 143 U.S. 79, 12 S. Ct. 340, 36 L. Ed. 82 (1892); [Brasher v. First Nat. Bank](#), 232 Ala. 340, 168 So. 42 (1936).
- 11 [Gilliland v. Mount Vernon Hotel Co.](#), 51 Wash. 2d 712, 321 P.2d 558 (1958).
- 12 [Crompton v. Beedle](#), 83 Vt. 287, 75 A. 331 (1910).

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